

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, JULY 8, 1993

Chairman Tull said, at 1:45 p.m., that the meeting would not begin until 2:00 p.m., in order to accommodate the appellants in the appeals hearing, who have asked for a delay.

MEMBERS PRESENT:ROBERT M. TULL, CHAIRMAN; COMMISSIONERS WANDA MOSBARGER, PATRICK J. GRAHAM and ARDITH DIVINE; and Ex Officio members SENATOR RAY MOORE and REPRESENTATIVE JUDI ROLAND

OTHERS PRESENT:FRANK MILLER, Director; BEN BISHOP, Assistant Director, Licensing and Financial Support; NEAL NUNAMAKER, Deputy Director; ROSELYN MARCUS, Asst. Attorney General; JACKI FISCHER, Financial Reporting; SUSAN YEAGER, Executive Secretary.

Chairman Tull called the meeting to order at 2:00 p.m. at the Silverdale On The Bay Resort Hotel in Silverdale, Washington. He asked if there were any additions or changes to the regular agenda as published. **Director Miller** said no. **Chairman Tull** asked if the agenda would be taken in order, or if the appeals hearing would take place first. **Director Miller** said the appellant's attorney has not arrived yet, so he suggested going through the agenda as written.

STAFF REPORTS

Director Miller said he would reserve these for tomorrow, when he would report on the legislative task force and budget issues.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS, and TRIBAL CERTIFICATIONS

Chairman Tull said these items are supplied to the members of the Commission in the agenda packet by staff; he asked if there are any changes or amendments. Hearing none, **Commissioner Mosbarger** moved that the licenses, changes and withdrawals be acted on in accordance with the recommendation of Commission staff as set forth in the agenda packet. **Commissioner Divine** seconded the motion, motion carried.

REVIEW OF FRIDAY'S AGENDA

Director Miller said that there aren't many rules. There are three housekeeping rules on the agenda tomorrow. He said they are to ensure that the rules are in accordance with the new RCW sections. There

were no questions and no general discussion. **Chairman Tull** asked if the Commissioners had any other topics, no one did.

HEARING ON APPEAL

Ronald A. and Gerta B. Fleischman

d/b/a 43rd Street Pub; Case Report No. 92-0783

and Tally Ho Tavern; Case Report No. 92-1052

Chairman Tull said the appellants are seeking Commission review of their revocation of their punchboard/pull tab license. He asked Mr. Fleischman to step forward to the front row of seating. **Kim O'Neal** said his attorney is not present yet. **Chairman Tull** said there were some traffic problems, and that the appeal would wait a few moments; so he called for the recertification reviews, and said they may be interrupted if the attorney arrives during them.

RECERTIFICATION REVIEWS

Big Brothers/Big Sisters of Tacoma/Pierce County, Tacoma

Jacki Fischer said they are a charitable organization with a Class "K" bingo license, and a Class "K" punchboard/pull tab license. Their primary services are provided through matching adult volunteers with boys and girls from single parent households, and also in a "sisters plus" program where teen moms are matched with big sister volunteers. They served approximately 2,648 clients last year, and net gambling revenues totaled \$602,105. They spent \$502,216 in direct support of program services; and staff recommends recertification as a charitable organization. **Commissioner Graham** asked about the non-gambling total of \$78,731 and where that money comes from. **Ms. Fischer** said that figure is usually membership dues and donations, for example. She said the total here represents mostly donations from the public to this organization.

Chairman Tull said to go through all of the recertifications and vote on them as a package and called for the next one on the list.

Association of Retarded Citizens/Kitsap County, Bremerton

Jacki Fischer said they are a charitable organization and hold a Class "G" bingo license. They also have a punchboard/pull tab license. The organization has five basic in-house programs that are listed in the packet information. They also sponsor an advocacy program. They served approximately 4,200 members last year. Net gambling revenues totaled \$296,375, and they spent \$182,927 in direct support of their stated purpose. Staff recommends recertification as a charitable organization.

Commissioner Graham commended the organization on its contributions. He asked staff if there is a way to bring the Commission up to date on projects these organizations say they're planning to do to improve their facilities, to be sure they really are doing so. **Ms. Fischer** said staff has plans to verify that on the financial statements presented next year. There are also plans to audit to verify this information. **Commissioner Graham** said he has noticed that lots of organizations have excess funds and they say they

are going to use it for improving the building or something, and then the Commission never finds out if they did these things. **Ms. Fischer** said staff does look at their next year's financial statements to see if what they've said they'd do has been done, and there are also plans to audit to verify that what they say on paper is actually true. **Commissioner Mosbarger** said she's been to this facility and that they desperately need to do something about the air conditioning.

Big Sisters of King County, Seattle

Ms. Fischer said they are a charitable organization and they hold a Class "J" bingo license and also punchboard/pull tab and amusement game licenses. The organization maintains three full-time administrative offices in Seattle, Renton and a new office in Bellevue. They have a one-to-one match program and a teenage mom program. They served approximately 418 clients during the last fiscal year, and net gambling revenues totaled \$309,415. They spent \$627,248 in direct support of their stated purpose. The staff recommends recertification as a charitable organization.

Commissioner Graham said he'd like to make a statement regarding losing money on the snack bars in bingo halls. He said that now that he's been appointed to the Governor's task force, he looks closely at things like a \$3,900 loss on the snack bar that made \$5,700 the year before, and that the Legislature is looking closely at these types of figures and there are quite a few organizations that have lost money on the snack bars. He said the Legislature will question that and will want to know who is profiting from these losses.

Chairman Tull said it was his recollection that the Commission decided to change its approach and not scrutinize the snack bar in the same manner, and that the bottom line for the organization is deemed to be more important than how they do their accounting. **Mr. Bishop** said they rolled them all into one package and measured that package, so a loss would decrease the net income from bingo and make it look smaller. **Commissioner Graham** said although that's true, the Legislature will look at it differently because they do not understand the operation of these halls. He said Director Miller will have three hours with the task force on July 23rd and he will need to explain many aspects of how gambling operates in the state. **Director Miller** said it will be an educational process and he will do his best to educate them during the time he has to explain.

Children's Industrial Home, Tacoma

Ms. Fischer said they are a charitable organization and hold a Class "I" bingo license and a punchboard/pull tab license. The organization maintains a full-time administrative office and four treatment facilities in Tacoma. They served 383 clients during the last fiscal year, and net gambling revenues totaled \$368,839. They spent \$2,425,695 in direct support of their stated purpose. Staff recommends recertification as a charitable organization.

Exchange Club, Tacoma

Ms. Fischer said they are a civic organization and hold a Class "G" bingo license, and also hold

punchboard/pull-tab and raffle licenses. Civic and charitable services are provided indirectly through contributions to various organizations. They estimated that 1,500 people received benefit from their donations. Net gambling revenues totaled \$71,309, and they spent \$88,094 in direct support of their stated purpose. Staff recommends recertification as a civic organization.

Commissioner Graham said the organization took in just over \$71,000 and gave out \$59,836 in contributions, which is very commendable; **Ms. Fischer** said she would let them know that.

Grange #667, Long Beach

Ms. Fischer said they are an agricultural organization and hold a Class "F" bingo license and also hold a punchboard/pull-tab license, which they upgraded to a Class "F" also. The organization maintains a community service club in Longbeach and provides services through the distribution of food baskets, sponsoring and participating in community support programs and hosting banquet-style dinners and distributing Christmas gifts to disadvantaged children. They served 2,081 people during the last fiscal year, and net gambling revenues totaled \$101,769. They spent \$54,411 in direct support of their stated purpose. Staff recommends recertification as an agricultural organization.

Chairman Tull said that concludes the reviews in the Commissioner's packet and suggested a motion; **Commissioner Graham** moved to recertify all the reviews documented in the packet in accordance with staff recommendation; **Commissioner Divine** seconded the motion, motion carried with four aye votes.

HEARING ON APPEAL

Ronald A. and Gerta B. Fleischman

d/b/a 43rd Street Pub; Case Report No. 92-0783
and Tally Ho Tavern; Case Report No. 92-1052

Chairman Tull said the meeting will now return to the agenda and take the Hearing on Appeal. He said it is the Commission's normal practice to grant both sides -- the appellant and also the assistant attorney general representing the Commission staff -- each ten minutes for oral argument. The appellant has the privilege of dividing that time in order to reserve some for rebuttal. He said the Commission may take up discussion in executive session and, if a decision is made, return to public session and announce the decision today. The written decision and order would then be forthcoming. If the Commission is unable to conclude deliberations today, the matter will be taken up at the next Commission meeting, at which the appellant would not be required to attend but would be welcomed to.

Chairman Tull asked the Commission if they have any preliminary matters on this item; he asked the same question of counsel; hearing none, he called for the appellant's counsel to come forward. He said there will be a tape recording of this proceeding.

Garold E. Johnson, attorney, said he is representing Mr. Ronald A. Fleischman. He said he is here seeking review and change of decision that was handed down by the hearings examiner on behalf of his client. He said that Mrs. Gerta B. Fleischman is also a license holder, but has nothing to do with this matter, and that she and Mr. Fleischman are separated. She has no knowledge or involvement in any of this.

When the dissolution is final, it is likely that one tavern will go to one and the other tavern will go to the other party. He said he thinks it would be unfair to revoke her license when she has absolutely no involvement. He said that Mr. Fleischman is present and can answer any questions of the Commission.

Mr. Johnson said he has been in the practice of law for many years and has never come to a case where he didn't have some empathy or understanding from the other side's point of view. He said this case mystifies him in that the sanctions being imposed are so harsh given the results that will occur, looking at what happened in the facts of this case. He can't figure out what disturbs the state so much that the Commission's attorney is willing to ruin a man's two businesses and put 12 people out of work. In the transcript, he said he read where counsel argues, "as far as the Gambling Commission is concerned, this is the most serious violation possible." He said that is a bit of a stretch, and the activity in question is not organized gambling or high stakes. This is not the kind of game that one would continue to chase the loss and get deeper and deeper into problems. He said it's probably not as addictive as lottery gambling and that there is no ability to be addicted to this particular game, and yet the Commission says it's the most serious violation possible. He said there's no indication of public violence. He said the state believes that the game was an attempt to subvert the regulations. Even if the game was an intent to subvert the regulations, the game was not created by his client. It had been in operation several weeks before Mr. Fleischman ever got involved, and he came in because someone was ill and asked Mr. Fleischman to take over the game and make the payouts because he knew the people in the game. He said this was to help a very, very sick man, Mr. Holt. The word "subvert" suggests some sort of evil intent, and the Gambling Commission says he was trying to make a profit. There isn't any profit in this game. He sold the tavern involved, the 43rd Street Tavern, which was only remotely involved in the first place; he had a security interest in it only. The only way to gain is if that business stayed in business. He said the Commission contends that Mr. Fleischman would risk his license and both of his businesses, just so he could get patrons in with this game. Certainly having people interested in a game, such as darts or whatever, helps a business, but he said it's a real stretch to say Mr. Fleischman was doing this for financial profit.

Mr. Johnson said the Gambling Commission, and all regulatory agencies, exist at the request of the Legislature. The purpose of the statutes of this agency are cited in his brief. He said the legislative declaration of purpose is found in RCW 9.46.010, "it is hereby declared to be the policy of the Legislature, recognizing close relationships between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling in this state; restrain persons from patronizing such professional gambling activities, to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling, and at the same time both preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes when such activities and social pastimes are for amusement rather than for profit, do not maliciously affect the public and do not breach the peace." He said he submits to the Commission that this game is completely within the purpose of this statute. He said there is no indication of contact with organized crime, he was seeking no profit and received no profit, and that Mr. Holt had no profit; every dime that came in on this game went back out.

Mr. Johnson said "common gambling houses" may be a bit of an antiquated term for this day and time, but the point may be that the Legislature does not want the kind of violence that goes with some kinds of gambling. He said this game couldn't even come close and there was no profit in it. It was \$1,800 over a period of 16 weeks during the regular season, except during the Super Bowl when it would be a couple of weeks longer. He said this isn't a gambling house or common gamblers. The evil of the gambling disease

doesn't apply, because once a participant plops down \$65, that's all the player pays. He said the testimony shows that this game is strictly for amusement, doesn't breach the peace or lead to violence. He said the Commission is also supposed to not stop games that are for past time and amusement. He said there is a particular statute dealing with boards.

Chairman Tull said he is almost out of time. **Mr. Johnson** said this board does not violate the statute dealing with boards because it is not exact; it doesn't fit the parameters, but he asked if this violation is really worth taking away this man's business, his two businesses. He asked if it would be effective to give a \$1,000 fine and if there are any violations within two years then his license is gone. He asked if that wouldn't be an effective message to send to anyone involved in organized gambling or this kind of game.

Chairman Tull said he will have about a half minute for rebuttal.

Kim O'Neal said what was being argued before the administrative law judge when she said was that, this is the most serious kind of violation that the agency sees as compared to the other kinds of cases heard. This is not a situation where improper activity was taking place on Mr. Fleischman's premises without his knowledge, which people get their licenses revoked for, but he was involved in the activity himself. This was a violation he engaged in himself. This is not merely a rule violation, and the Commission has revoked licenses for violating the Commission's rules or regulations. This was a statutory violation for which Mr. Fleischman was criminally convicted. A criminal conviction for profession gambling by a licensee was the argument she made before the administrative law judge and he accepted that argument. The licensees are given a public trust when the Commission grants them a license and the privilege of engaging in statutorily regulated gambling. They are trusted to follow the rules and statutes and ensure that everyone on the premises follow the rules as well.

Ms. O'Neal said not only did Mr. Fleischman allow it to take place, but he also engaged in this game himself. She said it makes no difference whether he engaged in this activity on his premises or somewhere else, but there are connections between this activity and the licensed premises. Mr. Fleischman himself indicates in sworn testimony that the reason he engaged in the game was to bring more business to his tavern. That means this was not a game strictly for amusement, at least not in his mind. She said he did it because it brings people into the premises and generates profit in the form of food and drink sales. **Ms. O'Neal** said that is what Mr. Fleischman said in his own testimony about why he did it. He admitted in testimony that the game did not conform to the statutory requirements and he knew going in that this board was not like the other sports pools he had run in the past. He admitted this to the court on his plea of guilty, and he admitted it to the agent. On page 35 of the transcript, his testimony stated that he knew it was different and did not bother to check and see if it was illegal.

Ms. O'Neal said the Commission would not be choosing to take away his business; that was his decision. He made the decision to risk his license when he knowingly engaged in illegal activity. The Gambling Commission is just carrying out its statutory duty to enforce the gambling statutes of the state of Washington. She said she's been trying to explain to Mr. Johnson that it is not his choice how to enforce the gambling laws; it is not his choice how the Commission carries out its statutory purpose. His argument could have been persuasive if it was written on a clean slate and if all there was was the statutory purpose language indicating what the Legislature thought the evils to avoid were. But that isn't all there is. There is a very specific statute that says what kind of sports pools are appropriate. This board does not fall into the category of legal.

Ms. O'Neal read the definition of a legal sports pool, which is RCW 9.46.0335, a sports pool that has 100 squares offered at \$1.00 or less per square, the purchaser signs each square at the time of purchase, not later than at the start of the athletic contest, only one athletic contest is allowed per board. Not later than the start of that contest, the pool is closed. Scores are assigned to each square and all money is paid, less taxes, to the persons holding squares. The pool board is available for inspection at all times prior to payout.

The person conducting the game conducts no other pool on other athletic contests, and the pool conforms to all rules and regulations. She said not a single one of those requirements are met here by Mr. Fleischman. There is little evidence in the record that he was conducting other pools, but there is testimony that he had conducted other pools, and she said she would argue that it is likely there were other pools at his licensed premises.

Ms. O'Neal said the pool he was running did not conform to any of the regulations required for these sports pools. The only authority to conduct sports pools in the state of Washington is in conformance with the rules. **Ms. O'Neal** urged the Commission to follow the reasoning of the administrative law judge, and that this is not a legal challenge, not a case where the appellant is arguing that the administrative law judge did not correctly find the facts or did not correctly construe the law, they challenge none of the Findings of Fact and none of the Conclusions of Law. The judge concluded on page seven of his decision that, "the public has the right to the highest degree of trustworthiness and integrity of those individuals who operate and conduct authorized gambling activities. The holders of such licenses must be prepared to cooperate fully with the police and with the Commission representatives in ensuring that professional gambling, cheating and other improper behavior does not occur or is recounted if it is found to occur"..."By the illegal gambling activities of co-licensee Ronald Fleischman, the licensees have failed in their affirmative responsibility to establish by clear and convincing evidence that they continue to meet the necessary requirements and qualifications for licensure as required. They are currently unfit and unqualified to hold the license." **Ms. O'Neal** said the law judge imposed a two-year revocation. She is arguing that, based on the evidence in the record, a licensee who himself engages in criminal professional gambling can not be trusted by the Commission. She urged that the Commission act the same as the administrative law judge and that the license be revoked for two years. She said there was an argument presented today for the first time as to the marital status of these licensees, and she said that this license is granted to both Mr. and Mrs. Fleischman, and it would not be appropriate to do anything other than revoke this license because of the behavior of Mr. Fleischman. If Mrs. Fleischman can demonstrate that, separately, she qualifies and is fit to hold a license, it might be appropriate for the Commission to separately license her, but that has no effect on this appeal.

Chairman Tull called on Mr. Johnson for his brief rebuttal. **Mr. Johnson** said his client completely cooperated with the investigation, this activity did not take place on his premises, and he did not know this was illegal. He asked how anyone, in their common experience, would know this was illegal. He said certainly, perhaps, a licensee should read the rules, but it's not likely that a licensee is going to happen to read every statute involved with regard to a Gambling Commission license.

Chairman Tull asked for questions. **Commissioner Divine** asked what happened to Mr. Holt in this case; **Mr. Johnson** said nothing happened to him, and there were no charges against anyone but Mr. Fleischman. And Mr. Holt started the board.

Chairman Tull said the Commissioners have previously been supplied with verbatim transcripts of the

hearing in front of the administrative law judge, Judge Stanford, they also received copies of the written arguments submitted by counsel following that administrative proceeding. He called for a two-minute recess and then an executive session for consideration of this case, which may take about 15 minutes. He said that after the executive session, if there is a decision to be announced, they will do so at that time. There is no other public business for today, so the Commission will adjourn until tomorrow morning at 10:00 a.m.

*** RECESS ***

Chairman Tull called the meeting back to order at 2:58 p.m. He said it's difficult to round everyone up to come back into session, so he'll wait just a moment for the rest of the people to come back.

Commissioner Graham said the next meeting of the Gambling Policy Task Force would be on Tuesday, July 23, 1993, at 9:00 a.m. at the SeaTac Office Building. He has a list of the senators and representatives on the task force available. He said the meeting will be an all-day session, with the first three hours containing a presentation by Director Miller. The meeting held last Friday, July 1st, only consisted of going over the subjects on a list he has and the availability of all the members to organize more meetings. Traci Ratzliff was also present and she will be at future meetings as well. **Chairman Tull** suggested that Commissioner Graham make a similar report tomorrow, and also in the future as more meetings are held.

Chairman Tull said the meeting is back in session and on the record for case number 92-0783 and 92-1052, appeal of Ronald A. and Gerta B. Fleischman. The Commission has reviewed the files, records and transcripts, and has heard the arguments of counsel, and has voted to uphold the Findings, Conclusions and Order of Administrative Law Judge Stanford that was entered previously, on March 2, 1993. The decision will be circulated and signed by the commissioners and then forwarded to counsel and the licensee.

Chairman Tull adjourned the meeting until 10:00 a.m. Friday morning.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, JULY 9, 1993

Chairman Tull called the meeting to order at 10:00 a.m. at the Silverdale On The Bay Resort Hotel.

MEMBERS PRESENT: ROBERT M. TULL, CHAIRMAN; COMMISSIONERS WANDA MOSBARGER, PATRICK J. GRAHAM and ARDITH DIVINE; and Ex Officio Member REPRESENTATIVE KAREN SCHMIDT

OTHERS PRESENT: FRANK MILLER, Director; BEN BISHOP, Assistant Director, Licensing and Financial Support; NEAL NUNAMAKER, Deputy Director; KIM O'NEAL, Asst. Attorney General; and SUSAN YEAGER, Executive Secretary.

Chairman Tull asked if there were any changes from the published agenda; hearing none he called for approval of the minutes of the last meeting.

APPROVAL OF THE MINUTES FROM THE JUNE 10-11, 1993, MEETING

Commissioner Mosbarger moved for the acceptance of the minutes from the June 10 and 11, 1993, meeting as set forth as printed in the agenda packet. **Commissioner Divine** seconded the motion, motion carried.

STAFF REPORTS

Director Miller said there's an information sheet he was going to pass out to the commissioners, but it has not arrived yet. He gave an overview of the information, which includes staffing and budget. The 1994-95 biennium budget was presented a year ago, and during the last year there have been significant changes, such as upgrading of equipment and expansion of staff, as well as implementation of the Class III program. The Commission approved adding 22 new staff as the casinos come on board, and none have been added since the proposal. There have been no new Class III operations open yet. The agency is watching very closely current revenues from licensees not associated with tribal gaming, and there has been a leveling off in that area. There have been adjustments made to the budget. At the end of this biennium, the fund balance was at \$2.4 million, and the initial estimate was it would be at about \$2.9 million, and three months ago it was \$2.6 million, so the present balance is below what was anticipated. As a result, he has instituted budgeting adjustments. Agency vehicles is one area that has been cut. The policy in the past has always been that, since the Commission is a law enforcement agency, staff were assigned vehicles and took them home. Many employees begin their work day from home, so vehicles have always gone home because it was thought to be more efficient, and security was also an issue. After careful review of state regulations, it was decided that vehicles would no longer be used for commuting, and the agency now uses a motor pool system for daily work outside the office. This was effective July 1st. It will save the agency about \$300,000

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during the next year in replacement vehicle costs.

Director Miller said the second area is \$700,000 in adjustments instituted over the next two years. These adjustments are not significant in nature, but are adjustments to the budget proposed a year ago so that the fund balance is kept at a \$2.2 - 2.3 million target range at the end of the next biennium. It will be watched monthly and the Commission will receive updates. Some of the areas being cut back are areas that were already paid for during the last biennium, so they're just coming out of the new budget. As he stated earlier, the vehicle savings represents \$300,000 of the \$700,000 being cut.

Chairman Tull asked if that \$300,000 figure is after projecting mileage reimbursement; **Director Miller** said the \$300,000 includes allowing for the mileage reimbursement, and the figure reflects mostly cuts in vehicle replacement. Taking out commute miles saves a lot of wear and tear on vehicles also. Administration has already turned in their cars and will no longer be using them. It was a difficult policy call to make, because it is not the most efficient use in some respects, but cuts had to be made.

Director Miller said the legislative gambling policy task force met for the first time on July 1st and it was mainly an organizational meeting; Representative Karen Schmidt is a member of the task force. The next meeting will be July 23, at which he said he will be making a presentation on gambling, and that will include Indian gaming. He urged licensees who want to be involved to work with staff and keep them posted if they want to testify and share information.

Commissioner Graham, who is the Gambling Commission member on the task force, said Senator Margarita Prentice will replace Senator Ray Moore, who declined to serve the task force. Senator Dean Sutherland, Senator Betty Sheldon, Senator Bill McCaslin and Senator Irv Newhouse are the other members from the Senate. From the House, Representative Mike Heavy, Representative Jim Springer, Representative Cal Anderson, Representative Barb Lisk, and Representative Karen Schmidt. There will also be a representative from the Governor's Office. There will be only 11 voting members; five from the Senate, five from the House, and one from the Governor's Office. Ex Officio members are from the Horse Racing, Lottery and Gambling Commissions, but they have no vote. He said he thinks this is going to be a very educational experience for the next six months. **Chairman Tull** asked if anyone has questions of Commissioner Graham or Director Miller. None were asked.

Director Miller said he had one other report and gave an overview on Indian gaming negotiations. Meetings with the Muckleshoot Tribe on live racing have begun. He said this is a unique issue in that the Horse Racing Commission is deeply involved with two sites primarily, the Auburn site and the Fife site, to establish a new track site. A few months ago, the Muckleshoot Tribe requested negotiations for a track, and they are also located in Auburn. Under state law, the Gambling Commission has an obligation to negotiate, and the agency is negotiating with the Muckleshoot Tribe and representatives from the Horse Racing Commission are there at the negotiations table as well. There have been two sessions since the last Commission meeting.

Director Miller said staff has received no new Class III gaming applications at this time. The Upper Skagit Tribe up by Bellingham had been working with a group out of Nevada, and are now looking for a new source of funding. The agency has meetings with Swinomish Tribe for renegotiation on keno, and there are also meetings with the Lummi Tribe, which is grandfathered in but wants negotiations with the state. The first operations audit of the Tulalip Tribe was completed, which was based on an agreement with the Tribe. Three of the Commission's agents spent two weeks looking at the operation and he is quite pleased with the

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results. The Tribe will now come before the Commission to increase from 23 to 31 tables. The agency has agreed to raise that to a twelve-month period instead of an 18-month period, based on the results of the audit. The Tribe opened 20 new tables of Class II poker, which is not under the jurisdiction of the Commission.

Director Miller said there is a strong movement on the federal level to reopen the Indian Gaming Regulatory Act to clarify some of the deficiencies that exists. There have been meetings in Washington, D.C. with the National Governors' Association and with members of the National Association of Attorneys General, and Washington state's Attorney General, Chris Gregoire is involved. The Gambling Commission has not been directly involved in the Governors' meeting, although the agency has given input to the Committee and will continue to work with them closely. They have looked closely at the Washington state program and the unique approach, and some have accused the agency of trying to push this program nationally. This is not the case. People have called for information and he said to goal is to preserve what the state has now. He said he does not want to see legislation go forward that takes away the state's right to negotiate. One question is what types of gaming must be negotiated; if a state has horse racing, does that mean it has to negotiate slot machines? Senator Inouye recently clarified in a statement that states do not; that it is an activity-by-activity analysis. The law does need to be clarified, because some courts have looked on this in a different light. The issue of lawsuits and what happens when a state is sued is another question. Recently, the state of Washington has had two lawsuits, one with the Spokanes and one with the Colvilles, in which it asserted Constitutional defenses that states cannot be forced to negotiate or to regulate an activity against its will, and the courts have agreed. Both cases have been dismissed, which is of concern to some tribes. Some states do not negotiate at all and just assert these defenses. That has to be resolved at the federal level. There is a movement to expand the Federal Indian Gaming Commission.

Chairman Tull asked about the states where there are a lot of Class III gaming has commenced and if they have significant state gambling regulatory agencies. **Director Miller** said that there is great concern that the large-scale gaming operations are not regulated well enough in some states. In Minnesota, there are 17 large casinos with up to 2,000 slot machines, 100 tables of blackjack with high stakes gambling 24 hours a day, and they have fewer people on their gambling commission staff than they do casinos because there is no funding for more regulation. They are funded by the state's general fund, which never gives them any money for a regulatory body. The state taxes charitable gaming heavily and they keep all that revenue; the Tribes pay nothing to the state for regulation, so there is no way to regulate it to the level that state would want.

Director Miller said that Wisconsin has set up a major system that combined Lottery and others to create a super agency, and they will have 15-16 casinos with little funding for regulation. They will have \$350,000 per year for all 17 casinos. In Connecticut, Foxwoods casino gives \$130 million per year off the slot machines to the state in exchange for a monopoly. This is one of the largest casinos in the world and there is only one person with the state to regulate the casino. It goes beyond tribal gaming in that there are states with charitable gaming that choose not to regulate as heavily as Washington state. They try to but there is no funding.

Someone from the audience asked how Nevada handles its tribal gaming. **Director Miller** said in Nevada, there isn't the same problem with tribal gaming. To compete, they have to play by the same rules the state does or no one will play. The Mohave Tribe had one of the first compacts and they've never really developed. It would be very difficult for Tribes in Nevada to compete. New Jersey has 1,100 agents for 11 casinos, which some say is a little heavy. Nevada has 350 for the entire state. Washington state has 150 to 160 for the whole state. In general, the states want gambling, they want the revenues, but they don't seem

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to want to regulate. A big scandal would have a ripple effect. **Chairman Tull** asked if there is still timely remittance from the tribes and if the payment system with the Tribes is still working; **Director Miller** said that is working and every payment due has been received. The Nooksack Tribe has not been billed yet. He said he's heard some concern that the state's hourly rate of \$39.40, which includes salaries, benefits, cars, gas, office, lights, clerical; and the agency feels that is quite reasonable for what it includes.

Chairman Tull asked if anyone has any questions of Director Miller. Hearing none, he said he feels it is appropriate to spend time on these issues this morning since the agenda is fairly light.

ADOPT OR AMEND RULES

Chairman Tull said that next item on the agenda is rules up for discussion this month and final action at the meeting in the Tri-Cities next month, and Director Miller will give a brief overview, and then the meeting will be open to public testimony.

Director Miller said that the agency has gone to twice a year implementation of rules, July and January. That gives staff the chance to work them out with groups of licensees. Last month, quite a few were passed. He said these rules are housekeeping, 3A (1) through (3). He said they conform the WAC rules to the RCWs and that's all they do at this point.

Chairman Tull said that the Commission will listen to any testimony the audience may have, and there will also be an opportunity next month in Pasco, which may be too far away for some of the audience members to travel. He said the Commission always accepts telephone or written comments on rules as well. Seeing no one come forward, he moved on to Item four, the petition.

PETITION

Sugarloaf Creations, Inc.

Director Miller said he would give a briefing on the petition and then turn it over to Joey Fiori, who is here from Sugarloaf to give a presentation. Sugarloaf was before the Commission before with a petition to allow large scale grocery stores to have their crane machines on the premises. They've also been in contact with many non-profit organizations that would like to have these cranes in their facilities, but cannot under current rules on a revenue sharing basis. Many organizations that staff has talked with do not want to have to hassle with the supplies and are more than willing to share a percentage in exchange for having this service performed. This petition requests that non-profit organizations be allowed to go into a revenue-sharing basis for an amusement game, but it would require a minimum of 22 percent be returned to the organization. It also contains a lot of housekeeping changes in the amusement game area, which is an area in need of cleanup. He said he reserves comment on the staff's final position until public comment, but staff does support the filing of the petition at this time.

Joey Fiori of Northwest Toys, a franchise of Sugarloaf Creations, Inc. of Boulder, Colorado. He said he left his stuffed animals at home this time. He said that, as they went through the process of getting applications from Fred Meyer and Safeway stores, they wanted to also go to the non-profit bingo halls as well. They got a very positive response and they now have 22 applications waiting, and they thought they would be able to service them the same way they do with Safeway and Fred Meyer stores. He thanked Ben Bishop and Sharon Tolton for their assistance with this new petition. He said the non-profits need the opportunity for

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professional skill crane operators to service machines. The petition will help the non-profits receive their services. The charity organizations have the option to service the machines themselves, but that can be very expensive and complex. With just one machine each, it wouldn't be a good idea. Some months are stronger than other months, so a set fee is not as good as a percentage. At Christmastime, the gross increases, so the percentage makes more sense. He said they appreciate the Commission's time and hopes they will vote to file the petition at this time.

Commissioner Graham said this, in small way, is gambling. He asked Mr. Fiori if he's familiar with the moratorium on gambling in the state of Washington and the fact that the Legislature established a task force to look at that issue before any expansion is approved. **Mr. Fiori** asked Commissioner Graham to repeat the question. **Commissioner Graham** said the Gambling Commission has been asked by the state to not expand gambling in any way until the task force has looked at gambling and reports. He said maybe Director Miller can answer if this is an expansion.

Director Miller said he feels that this is not an expansion at all, and that these games are currently available to be played at the non-profit setting and some non-profits have them already. This petition would allow those organizations that choose not to invest in a game or buy the machine outright, to have a company come in a place the machine. Instead of a flat rent, there would be a percentage basis. He said staff does not believe it to be an expansion. **Commissioner Graham** asked Representative Schmidt if she thinks this would be considered expansion by the Legislature; **Representative Schmidt** asked Director Miller if any of the prize levels are being increased; **Director Miller** said no, at this point no. He said his opinion is that the Commission doesn't have the ability to expand gambling; that is done by statute. The Commission only has the ability to adjust, such as in the case of the pull tab prize adjustment that was made after looking at the issue for a year and was filed before the moratorium issue ever came out. He said that may result in greater sales, but it didn't change the nature of the game. He said this petition would not result in expansion. **Representative Schmidt** said the Legislature would see expansion as increases in the scope or level, for example if the Commission was raising the stakes in bingo or in pull tabs, or going into a greater level of games than what is currently in operation. They want to avoid the piece-meal approach that has occurred in the past. **Chairman Tull** said this would not increase the number of locations; **Director Miller** said no, it just changes the structure; **Chairman Graham** said it just allows a different business relationship between licensees. **Director Miller** said one could argue that it will result in more cranes being placed in non-profit organizations, but there has been a decline in the popularity in cranes over the last few years, and this is not expected to result in anywhere near the number of cranes there were two years ago. It just moves risk away from the non-profit organization. **Chairman Tull** said it would be fun to debate how or how not to respond to the moratorium, but this issue does not fall under the moratorium. **Representative Schmidt** asked when the Commission would be adopting this; **Chairman Tull** said, in the event it would be adopted, it would be no sooner than September or October. **Representative Schmidt** said she would add this petition to the update she prepares for the task force meeting, so if they have any comments or concerns, then they can ask. **Chairman Tull** said he sees this as fundamentally a change that would allow certain operations to pay percentage rent for machines instead of some other fixed rate.

Commissioner Graham moved for filing for consideration; **Commissioner Mosbarger** seconded the motion, **Chairman Tull** asked for public comment; hearing none, a vote was taken; motion carried with four aye votes.

UNFINISHED BUSINESS

Director Miller said the information he was waiting for has come in and he passed out the documents. The

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first page shows the current level of FTEs, the next pages shows the cuts over the next two years of \$771,000, and some have already been implemented. There will not be a major impact on the agency's ability to do the job. One of the biggest cuts is in travel. Tribal negotiations have been reduced considerably and there should be a slowdown in travel in that area. The sheets show revenue projections and projected fund balance. **Chairman Graham** asked what the initials "EA, EB, ER and EZ" mean; **Director Miller** said those stand for budget areas, and basically the list reflects a five percent goods and services cut across the board. **Mr. Bishop** said those are things the agency does have control over, not things like rent. **Director Miller** said staff is committed not to raising license fees and that is not expected in the short term. **Commissioner Mosbarger** asked about the cuts in training and if that will have an impact, she said she's nervous about any cuts in training. **Director Miller** said it requires staff to spread out certain memberships and training, law enforcement academy training will be spaced out a little more. Right now seven people from staff are in the academy, which takes three months. Sheri Winslow is a program manager who will be graduating from the academy in two or three weeks. In the future there will be fewer staff in at the same time because existing staff will be finished and only the new people will be going. **Neal Nunamaker** said the agency was fortunate to get all of these staff people in the academy at this fiscal period. All will have to be complete over the next biennium. It's relatively economical to send people through the academy, because it costs only \$1,000 for three months training, which includes room and board. **Director Miller** said 22 new people are projected to come on board in the next year to two years and they will all have to be trained also.

Mr. Bishop said some of the other money was for specialized training; \$14,000 in year one and \$13,000 year two was specialized training to do with funds tracing. An in-house program is being developed by those who have already attended some of that training. **Chairman Tull** asked when Juli, Ben, and Frank are scheduled to attend the academy. **Mr. Bishop** said he's scheduled for four years after Director Miller attends. **Director Miller** said he might not mind going away for three months; **Chairman Tull** said he's been in favor of that the last eight or nine years and that they would probably be fascinated; **Director Miller** said he quit smoking already and that is probably enough. He said he has thought about it and appreciates the Commission's comments.

Chairman Tull asked if there were any other unfinished items, or comments of the public or public officials; **Representative Schmidt** said she has no comments at this time. **Chairman Tull** urged the audience to feel free to bring up anything, since there is time now to discuss anything they'd like to. Hearing none, he called for other business. There was no other business.

Chairman Tull said the meeting is adjourned.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Yeager
Executive Secretary

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